Supreme Court, U.S.
FILED
APR 6 1994
OFFICE OF THE CLERK

No. 93-1377

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

WILLIAM C. WARDLAW,

Petitioner,

v.

WILLIAM R. PICKETT, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF *AMICUS CURIAE* OF TWENTY-NINE TORT AND CONSTITUTIONAL LAW PROFESSORS SUPPORTING PETITIONER

MARK M. HAGER
Washington College of Law
The American University
4400 Massachusetts Ave., N.W.
Washington, D.C. 20016
(202) 885-2615

Counsel of Record for Amicus Curiae Twenty-Nine Tort and Constitutional Law Professors

April 6, 1994

Washington, D.C. • THIEL PRESS • (202) 328-3286

14 pp

INTEREST OF *AMICUS CURIAE*

Amicus curiae Twenty-Nine Tort and Constitutional Law Professors is a group of law professors who teach or have taught tort or constitutional law. The members of this group, desiring to serve the public interest, formed *amicus* for the purpose of urging review of this case. *Amicus* supports the position of the petitioner.

The members of *amicus*, and the law schools at which they teach, are as follows:

Richard Abel, UCLA School of Law
Kathryn Abrams, Cornell Law School
Jane Aiken, University of South Carolina School of Law
Jennifer Arlen, Emory University School of Law
Leslie Bender, Syracuse University College of Law
Anita Bernstein, Chicago-Kent College of Law
Jamie Boyle, Duke University School of Law
Anthony Chase, Nova University Law Center
John Culhane, Widener University School of Law
Okianer Dark, University of Richmond School of Law
Richard M. Fischl, University of Miami School of Law
Mark M. Hager, Wash. Col. of Law, American University
Jon Hanson, Harvard Law School
Nick Kittrie, Wash. Col. of Law, American University
Sylvia Ann Law, New York University School of Law
Joel Paul, Wash. Col. of Law, American University
Gary Peller, Georgetown University Law Center
Jerry Phillips, University of Tennessee College of Law
James Pope, Rutgers Center for Law and Justice
Andrew Popper, Wash. Col. of Law, American University
Jamin Raskin, Wash. Col. of Law, American University
Jed Rubenfeld, Yale Law School
Thomas Sargentich, Wash. Col. of Law, American Univ.
Peter Schuck, Yale Law School

Rodney Smolla, William and Mary School of Law
Girardeau Spann, Georgetown University Law Center
Burt Wechsler, Wash. Col. of Law, American University
Robin West, Georgetown University Law Center
Richard Wright, Chicago-Kent College of Law

SUMMARY OF ARGUMENT

Under fundamental and uncontroversial common law, unlawful attackers are liable for striking privileged intervenors who aid the attackers' victims.

ARGUMENT

Liability of unlawful attackers to privileged intervenors who aid the attackers' victims is not controversial. The principles of the *Restatement (Second) of Torts* (1965) which hold the attackers liable, Petition for Writ of Certiorari at 13-14, are part of the fundamental fabric of tort law.

Law on defense of another flows from the law of self-defense. *Id.* The *Restatement* principles holding unlawful attackers liable to victims who reasonably defend themselves are equally fundamental and uncontroversial. We know of no courts or legal scholars who question the accuracy or soundness of the *Restatement* on these basic matters.[1]

While the court below acknowledged the existence of the intervenor's privilege, Pet. App. 6a, it failed to recognize two concommitant principles. Both are fundamental, uncontroversial, and expressly included in the *Restatement*. First, an unlawful aggressor has no privilege to strike a privileged intervenor. *Restatement* § 72. Second, an intentional blow,

---

[1] The decision below did not do so. Rather, it ignored, or overlooked, the *Restatement*.

unless privileged, is a battery for which the perpetrator is liable. *Restatement* §§ 10 and 13.

The lower court's failure to recognize these two principles was fundamental error. On the facts before the Court, and under basic precepts of tort law, Deputy Marshal Pickett, the unlawful aggressor, is liable for punching Mr. Wardlaw, the privileged intervenor.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Mark M. Hager
Counsel of Record for *Amicus Curiae* Twenty-Nine Tort and Constitutional Law Professors

Washington College of Law
The American University
4400 Massachusetts Ave., N.W.
Washington, D.C. 20016
202/885-2615

April 6, 1994